

Joshua Koltun (Bar No. 173040)
One Sansome Street
Suite 3500, No. 500
San Francisco, California 94104
Telephone: 415.680.3410
Facsimile: 866.462.5959
joshua@koltunattorney.com

Attorney for Nonparty Witnesses
Marine Taxonomic Services, Ltd,
Below the Blue, Seth Jones, and
Monique Rydel-Fortner (“BTB-MTS”)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,

v.

PACIFIC BELL TELEPHONE COMPANY

Defendant

Case 2:21-cv-00073-JDP

PACIFIC BELL TELEPHONE COMPANY,

Movant,

v.

MARINE TAXONOMIC SERVICES, LTD.

Respondent

Case No. 2:24-cv-00022-KJM-JDP

**PROPOSED ORDER RE COST-
SHIFTING**

Zoom Hearing: December 12, 2024

Time: 10 am

Courtroom 9

Judge: Hon. Jeremy D. Peterson

1 The Motion by Third Party Witnesses Below the Blue, Marine Taxonomic Services, Ltd, Seth
2 Jones, and Monique Rydel-Fortner (hereinafter, collectively, “BTB/MTS”), for cost-shifting, came on
3 for hearing on December 12, 2024.

4 Upon consideration of the briefs, arguments and evidence in support of and in opposition to
5 the motion the Court HEREBY FINDS AND ORDERS AS FOLLOWS:

6
7 1. AT&T must reimburse the “significant expense” it incurred in complying with
8 AT&T’s subpoena, as well as its attorney fees for seeking such cost-shifting. Such an award is
9 **mandatory** under Fed.R.Civ.P. (“Rule”) 45(d)(2)(B)(ii). *Legal Voice v. Stormans Inc.*, 738 F.3d 1178,
10 1184 (9th Cir. 2013)(“*Legal Voice I*”); *Id.*, 757 F.3d 1015, 1016-17 (9th Cir. 2014) (“*Legal Voice II*”).

11 2. These significant expenses include the fees for the ESI vendor (which AT&T had
12 recommended) and the time counsel and BTB-MTS staff spent reviewing documents for production.

13 3. BTB-MTS has reasonably incurred the following expenses in complying with the
14 subpoena:
15

- 16 a) \$227,512 for fees charged by A&M, the ESI vendor
- 17 b) \$68,860 in attorney fees
- 18 c) \$85,269 in hours spent by Jones and Rydel-Fortner
- 19 d) For a total of \$381,641.

20 4. I find, that of that amount, \$380,000 was “significant.”

21 5. BTB has also reasonably incurred \$22165 in attorney fees such fees to date (40.3
22 hours).

23 6. ***Thus the total amount that is awarded to BTB-MTS is \$402,165***

24 7. BTB-MTS is ordered to reimburse Dow Jones for any portion of the award that Dow
25 Jones advanced.

26 8. I also find that this amount is appropriately awarded as sanctions against AT&T and
27 its counsel of record, jointly and severally, because the discovery in this case was taken for an
28

1 improper purpose, and because to fail to award the foregoing sum would render BTB-MTS an
2 involuntary uncompensated expert. *Mattel Inc. v. Walking Mt. Prods.*, 353 F.3d 792, 813-14 (9th Cir.
3 2003). It does not appear that AT&T had any legitimate need for the documents that BTB-MTS was
4 forced to produce, and indeed AT&T agreed to remove the cables without conditions without ever
5 obtaining the adjudication of its claims about BTB-MTS's investigation that supposedly justified the
6 delay in removing the cables.
7

8
9 IT IS SO ORDERED.

10 Dated: December __, 2024

11 The Honorable Jeremy D. Peterson
12 United States Magistrate Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28